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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,538	01/23/2004	Norman E. Nitzsche	1200304R	9225

35227 7590 10/04/2006

POLYONE CORPORATION  
33587 WALKER ROAD  
AVON LAKE, OH 44012

EXAMINER
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SANDERS, KRIELLION ANTIONETTE

ART UNIT	PAPER NUMBER
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1714

DATE MAILED: 10/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/763,538

Applicant(s)

NITZSCHE, NORMAN E.

Examiner

Kriellion A. Sanders

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 11-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 11-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |  |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/04, 8/04</u> | 6) <input type="checkbox"/> Other: ____  |

## **DETAILED ACTION**

### ***Specification***

1. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

2. The use of trademarks throughout the entire specification has been noted in this application. They should be capitalized wherever they appear and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-5, 8, 9 and 11 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Akao, EP 370,424.

Akao, EP 370,424, discloses a resin composition for masterbatch comprising 5-90% by weight of a polyolefin resin and 5-70% by weight of carbon black. It is further taught by Akao that the composition may include a polyolefin wax having a molecular weight of 500 to 20,000, such as ethylene-bisstearamide. Additional components that may be included in the patented compositions include stabilizers, fillers, coloring agents and blowing agents. (See the abstract, col. 2, lines 40-46 and col. 7, lines 2-36). No patentable difference is ascertained between present and patented inventions.

#### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-9 and 11-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Akao, EP 370,424 in view of Findley, U.S. Patent No. 5,176,751.
3. Applicant's invention is directed to a color concentrate for polymeric materials comprising at least one colorant, a compatible polymer, a wax binder and a functional compounding additive such as blowing agents.
4. Akao, EP 370,424, discloses a resin composition for formulating a masterbatch composition comprising 5-90% by weight of a polyolefin resin and 5-70% by weight of carbon

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black (see abstract and col. 2, lines 40-46). Akao teaches that the composition may further include a polyolefin wax having a molecular weight of 500 to 20,000, such as ethylene-bis-stearamide (see col. 6, lines 11-55), nonionic surfactants (see col. 7, lines 7-9), fillers, such as alumina, kaolin, clay and silica (see col. 7, lines 13-14), reinforcing agents, such as glass fiber (see col. 7, lines 15-16), coloring agents, such as inorganic and organic pigments (see col. 7, lines 18-20), and blowing agents (see col. 7, lines 21-24). Specifically, note Examples 1-7. However, patentee differs from applicant in that Akao requires 5-90% by weight of a polyolefin resin, whereas the instant claims are substantially free of polymeric resin material.


Findley, U.S. Patent No. 5,176,751 discloses a color concentrate pellet comprising 30-90% by weight of either or both of an organic or inorganic pigment such as titanium dioxide and/or carbon black, a bis-stearamide wax carrier (col. 2, lines 46-55 and col. 4, lines 55-61), and adjunct additives, such as calcium carbonate, talc, and glass (col. 13, lines 39-44). The color concentrate pellets of Findley are made by cold-pressing the components in die cavities per the requirements of the instant invention. It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to utilize the specific, conventional organic colorants of Findley in the EP compositions, since they are not specifically named in the primary reference. Likewise, it would have been obvious to produce the resin compositions of the EP patent by following the more in depth process parameters of Findley, since the EP reference provides only general instruction as to the method of producing the compositions. See col. 2, lines 55-68 and col. 4, lines 6-25, col. 4, line 36 through col. 5, line 44 and col. 6, lines 14-62, specifically note Examples 1-10.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kriellion A. Sanders whose telephone number is 571-272-1122. The examiner can normally be reached on Monday through Thursday 8:30am-7:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on 571-272-1119. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Kriellion A. Sanders  
Primary Examiner  
Art Unit 1714

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